

1 Robert A. Mittelstaedt (State Bar No. 60359)
2 ramittelstaedt@jonesday.com
3 David C. Kiernan (State Bar No. 215335)
4 dkiernan@jonesday.com
5 Lin W. Kahn (State Bar No. 261387)
6 linkahn@jonesday.com
7 JONES DAY
8 555 California Street, 26th Floor
9 San Francisco, CA 94104
10 Telephone: (415) 626-3939
11 Facsimile: (415) 875-5700

12 Attorneys for Defendant
13 Adobe Systems Inc.

14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
17

18 IN RE: HIGH-TECH EMPLOYEE
19 ANTITRUST LITIGATION

20 THIS DOCUMENT RELATES TO:
21
22 ALL ACTIONS
23
24
25
26
27
28

Master Docket No. 11-CV-2509-LHK

**DECLARATION OF LIN W. KAHN
IN SUPPORT OF DEFENDANTS'
JOINT ADMINISTRATIVE MOTION
TO FILE UNDER SEAL**

Date Consolidated Amended Compl. Filed:
September 13, 2011

1 I, Lin W. Kahn, declare as follows:

2 1. I am an attorney with the law firm of Jones Day, counsel for Defendant Adobe
3 Systems Inc. ("Adobe") in the above-captioned action. I am admitted to practice law before this
4 Court. I submit this declaration in support of Defendants' Joint Administrative Motion to File
5 Under Seal. As an attorney involved in the defense of this action, unless otherwise stated, I have
6 personal knowledge of the facts stated in this declaration and if called as a witness, I could and
7 would competently testify to them.

8 2. I have reviewed Exhibit A to the Omnibus Declaration of Christina J. Brown in
9 Support of Defendants' Replies in Support of Joint Motion to Exclude Testimony of Edward E.
10 Leamer, Ph.D. and Joint Motion to Strike Improper Rebuttal Testimony in Dr. Leamer's Reply
11 Expert Report ("Omnibus Brown Declaration").

12 3. As described below, the information requested to be sealed contains or
13 summarizes Adobe's compensation and recruiting data, practices, strategies and policies. Adobe
14 has designated this information as "CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant
15 to the Protective Order in this case. (ECF No. 107).

16 4. The January 9, 2014 Declaration of Rosemary Arriada-Keiper in Support of
17 Motion to Seal (ECF No. 579) and Declaration of Jeff Vijungco in Support of Motion to Seal
18 (ECF No. 578) establish that Adobe's compensation data, practices, strategies and policies, as
19 well as its recruiting data, practices, strategies and policies (such as the information sought to be
20 redacted below), are confidential and commercially sensitive. As stated in these declarations, it is
21 Adobe's practice to keep such information confidential, for internal use only, and not to disclose
22 them to the public.

23 5. Moreover, these declarations establish that the public disclosure of this
24 information would competitively harm Adobe, including impairing its competitive position in
25 recruiting, hiring, and compensating employees. Ms. Arriada-Keiper and Mr. Vijungco declared
26 that Adobe derives independent economic value from keeping its compensation data and
27 compensation, recruiting and hiring practices, strategies, and policies confidential, including
28 keeping it from other persons, entities, and/or competitors who could obtain economic value from

1 its disclosure or use.

2 6. Furthermore, as stated in the above declarations, the public disclosure of this
3 information, created for internal use, would give third-parties insights into confidential and
4 sensitive aspects of Adobe's operations and deprive Adobe of its investment in developing these
5 practices, strategies, and policies. These declarations further establish that such disclosure would
6 give other entities an unearned advantage by giving them the benefit of knowing how Adobe
7 compensates employees and Adobe's compensation, recruiting, and hiring practices, strategies,
8 and policies.

9 7. In addition to the above, Adobe's declarations filed in support of the Opposition to
10 Plaintiffs' Motion for Class Certification also establish the confidentiality of Adobe's
11 compensation and recruiting data, practices, strategies and policies. In particular, the Declaration
12 of Donna Morris of Adobe Systems Inc. in Support of the Opposition to Plaintiffs' Motion for
13 Class Certification (ECF No. 215, Exhibit 14) ("11/9/2012 Morris Decl."), paragraph 3,
14 establishes that Adobe's salary and compensation data, policies and strategies are confidential and
15 that public dissemination of that information could cause Adobe competitive harm. The
16 Declaration of Jeff Vijungco of Adobe Systems Inc. in Support of the Opposition to Plaintiffs'
17 Motion for Class Certification (ECF No. 215, Exhibit 15) ("Vijungco Decl."), paragraph 3,
18 similarly establishes that Adobe's recruiting and hiring data, policies and strategies are
19 confidential and that public dissemination of that information could cause Adobe competitive
20 harm.

21 8. Specifically, Adobe seeks to keep the redacted parts of the following portions of
22 Exhibit A to the Omnibus Brown Declaration under seal:

23 **Exhibit A, November 12, 2012 Expert Report of Professor Kevin M. Murphy**

24 9. Adobe seeks to file under seal the redacted portions of the November 12, 2012
25 Expert Report of Professor Kevin M. Murphy that the Court sealed in its September 30, 2013
26 Order (ECF No. 509), specifically:

- 27 a. **Exhibit 3** contains confidential information about the top twenty previous
28 employers of Adobe's hires. This is confidential employee data that pertains to

Adobe's recruiting strategies, methodologies, and practices.

- b. **Appendices 1A, 1C, 2A, and 2C** contain confidential information about the number and percentage of hires at Adobe from other defendants. This is confidential employee data that pertains to Adobe's recruiting strategies, methodologies, and practices.
- c. **Appendices 1B, 1D, 2B, and 2D** contains confidential information about the number and percentage of separations at Adobe that went to other defendants. This is confidential employee data that pertains to Adobe's recruiting strategies, methodologies, and practices.
- d. **Appendices 4A and 4B** contain information about the distribution of base salaries at Adobe. This is confidential employee salary information that pertains to Adobe's compensation methods, strategies, practices and data.
- e. **Appendices 4C and 4D** contain information about the distribution of total compensation at Adobe. This is confidential employee salary information that pertains to Adobe's compensation methods, strategies, practices and data.
- f. **Appendix 5A** contains information about the distribution of total compensation for the top 10 jobs at Adobe. This is confidential employee salary information that pertains to Adobe's compensation methods, strategies, practices and data.
- g. **Appendix 6A** contains information about the distribution of annual changes in total compensation for the top 10 jobs at Adobe. This is confidential employee salary information that pertains to Adobe's compensation methods, strategies, practices and data.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 27th day of February 2014 in San Francisco, California.

By: /s/ Lin W. Kahn

Lin W. Kahn